MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 29, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Dan Marvin, Cecil Steward and Tommy Taylor (Mary Bills-Strand absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Cecil Steward called the meeting to order and requested a motion approving the minutes for the regular meeting held October 15, 2003. Motion for approval made by Krieser, seconded by Carlson and carried 5-0: Carlson, Duvall, Krieser, Larson and Steward voting 'yes'; Bills-Strand, Marvin and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Carlson, Duvall, Krieser, Larson, Steward and Taylor; Bills-Strand and Marvin absent.

The Consent Agenda consisted of the following items: **CITY/COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 03012, STREET AND ALLEY VACATION NO. 03012, STREET AND ALLEY VACATION NO. 03013 and STREET AND ALLEY VACATION NO. 03016.**

Item No. 1.1, City/County Comprehensive Plan Conformance No. 03012; Item No. 1.2, Street and Alley Vacation No. 03012; and Item No. 1.3, Street and Alley Vacation No. 03013, were removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Krieser and carried 6-0: Carlson, Duvall, Krieser, Larson, Steward and Taylor voting 'yes'; Bills-Strand and Marvin absent.

STREET & ALLEY VACATION NO. 03012
TO VACATE THE EAST-WEST ALLEY
FROM THE EAST LINE OF N. 26TH STREET
TO THE WEST LINE OF N. 27TH STREET,
GENERALLY LOCATED AT N. 27TH STREET & Y STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson and Steward; Bills-Strand and Marvin absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.

Greg Czaplewski of Planning staff submitted revised Condition #1.2: "A permanent easement is retained over the entire area for existing and future public facilities."

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Taylor moved a finding of conformance, seconded by Carlson and carried 6-0: Krieser, Taylor, Duvall, Carlson, Larson and Steward voting 'yes'; Marvin and Bills-Strand absent.

CITY/COUNTY COMPREHENSIVE PLAN
CONFORMANCE NO. 03012,
TO REVIEW THE PROPOSED ACQUISITION
OF PERMANENT CONSERVATION EASEMENTS
OVER CERTAIN PORTIONS OF THE SALT CREEK
FLOODPLAIN, AS TO CONFORMANCE WITH THE
COMPREHENSIVE PLAN.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: A finding of conformance.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of Danny Walker.

Proponents

1. Nicole Fleck-Tooze presented the application on behalf of the Directors of Public Works and Utilities and the Parks and Recreation Departments. The purpose of this application is to review the acquisition of permanent conservation easements over the Salt Creek floodplain south of Wilderness Park as to conformance with the Comprehensive Plan. This seeks to move forward with grants from FEMA and Nebraska Environmental Trust for protection of the floodplain corridors of Wilderness Park. The Comprehensive Plan identifies this area as green space and it is included in the Greenprint Challenge. Both of these grant programs are on a voluntary purchase basis only, and the city is in the process of negotiating with property owners that have expressed an interest in participating in the program. The parcels outlined on the map are potential sites and nothing has been finalized. The purpose of moving forward is to have a finding that this acquisition will be in conformance with the plan so that when and if we are successful in negotiating, we can proceed with acquisition prior to the end of the grant period.

Steward inquired as to how this meshes, fits or otherwise relates to the recent floodway studies that have been performed. Fleck-Tooze advised that the most recent was the Southeast Upper Salt Creek Master Plan for the basin basically east and north of the area shown on the map. That plan focused on the entire watershed and the floodplain tributaries, but kind of outside of this Salt Creek floodplain. This proposal builds on that concept of looking at this from a flood control perspective as well as from a natural resource perspective in trying to make sure this area stays open and serves the purpose of Wilderness Park.

2. Mary Roseberry-Brown testified in support. As many studies show, vegetative control is much more economically feasible in terms of flood control than to build structures. There have been local studies done in 2002 that would show that property values would go up on those properties in proximity to the green space. The recent thrust in city government seems to be for economic growth and we know that those property values would go up and increase property taxes. In terms of stream stability, erosion control and water quality, there has been much study done showing that providing buffers along stream corridors is the best management practice. The buffers filter runoff and provide erosion control.

3. Danny Walker, 427 E Street, lives in the middle of a floodplain. He is neither for nor against this proposal. He is confused and submitted the following questions: 1) where would

the advantage of easement purchase be when, in fact, downstream the floodplains of Salt Creek are being taken up by developers and very large amounts of fill (some of which have illegal contents). He referred to the proposed development at S.W. 1st and West B which does not meet no net rise standards. 2) When is the city going to come forward with some form of compensation for the damage to the floodplains of Salt Creek that the city has allowed to occur downstream of Wilderness Park? Floodplains downstream are being filled with the City of Lincoln's blessings. 3) What are the cumulative effects of the fill? 4) Are the 1' standards being met, and, if so, what formula is being utilized? Mr. Walker requested a written response to these questions.

Walker believes this is "stupid". Here we are spending taxpayer's money for these easements south of Wilderness Park, but what are we doing downstream but filling in the floodplain. Does that really make sense?

Response by the applicant

With regard to the advantage of purchasing an easement when the downstream areas are being filled, Fleck-Tooze suggested that as we look at the area in a comprehensive way, this is one strategy we have to preserve flood storage and conveyance. One of the reasons that Wilderness Park was developed early on was for flood storage protection for downstream Lincoln, and this is really carrying on that concept in the way that was supported by FEMA in terms of the grant.

As far as impacts from tree masses that are preserved further downstream in the event of flood, Fleck-Tooze report that, contrary to any adverse impacts, the Corps study done showed that there was actually a lot of benefit to preserving tree masses because it slowed down flood waters upstream and south of the City, without adversely impacting the area developed downstream.

Fleck-Tooze further advised that this is really one of a multi-pronged approach that the city is trying to use for floodplain management. The city is in the process of drafting floodplain standards to come forward to reflect the recommendations of the Mayor's Flood Plain Task Force. The city is also developing basin-by-basin watershed plans that address floodprone areas. This is just one other tool that we have as protection for downstream Lincoln. It won't alleviate flooding in other areas of the city, but it certainly is one tool to help prevent the increase in future flood hazards. Fleck-Tooze clarified that this application is not whether to approve a certain grant or use of public funds–those grants have already been dedicated to the city. This is a finding as to conformance with the Comprehensive Plan to move forward with the acquisition of permanent conservation easements. This area is shown as green space in the Comprehensive Plan and this is one way to make sure this area stays as green space.

Steward commented that what the Commission is being asked to do is to determine wether this conservation effort is in conformance with the Comprehensive Plan. There is no engineering information or any specific project focus involved. Fleck-Tooze concurred.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Larson moved a finding of conformance, seconded by Taylor.

Taylor stated that he appreciates Mr. Walker's information and questions, but he has looked at this and he likes the idea, especially how it relates to Wilderness Park.

Steward commented that had our forefathers had the tools and the wisdom and foresight to preserve and protect our natural watersheds, we wouldn't have flooding in any of the regions of the city. Better to protect what we still have than continue the practices that we have had.

Motion for a finding of conformance carried 7-0: Krieser, Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Bills-Strand absent.

STREET & ALLEY VACATION NO. 03013
TO VACATE S. 49TH STREET FROM THE
SOUTH RIGHT-OF-WAY OF PRESCOTT AVENUE
TO THE NORTH RIGHT-OF-WAY OF LOWELL AVENUE,
AND THE WESTERNMOST 50' OF THE ALLEY
EAST OF S. 49TH STREET, BETWEEN PRESCOTT
AVENUE AND LOWELL AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: A finding of conformance.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had public hearing.

Proponents:

1. Terry Bock, 5751 Saltillo Road, Pastor of the College View Seventh Day Adventist Church, presented the application, and discussed the church's master plan. The new parking lot on 49th & Lowell was constructed with one driveway out onto Lowell Avenue. There is a

large tree where a second driveway was going to be located. When the church was constructed in 1977-78, they were able to use a fair amount of parking on the Union College campus to offset some of the lack of on-site parking for the church. Over the years, the attendance at the church and the college has increased, thus the parking availability from Union College campus has decreased, prompting the church to add a parking lot on the west side along 48th Street, with diagonal offset parking on one side of Prescott, on both sides of 49th and on the church side of Lowell Avenue. Four years ago, the church constructed the parking lot at 49th & Lowell. The neighborhood still absorbs quite a bit of on-street parking, especially on Saturdays. The program needs have increased at the church and additional facilities are needed. In addition to a youth room and new young adult program space, the third highest ranking need at the church was more parking. That has resulted in this proposal to vacate So. 49th Street and the associated alley to allow the College View Church to expand its facility and a significant increase in on-site parking.

Pastor Bock showed the potential master plan proposal. It allows for facility expansion and increases on-site parking by about 77 spaces, hoping to relieve some of the congestion in the community on Saturdays. In addition to vacating 49th Street, they would take down two rental properties, and would acquire a couple more properties along Prescott, which the Church is in the process of doing.

Pastor Bock stated that the only objection they have anticipated is an inconvenience to get to Prescott to go south on 48th. People can go south to Pioneers and over to 48th. There was also concern about a dead-end alley. There is already an existing driveway onto Lowell Avenue and with this proposal there would be a driveway on the north end of the alley as well.

Opposition

1. Georgean Barber, 2301 So. 62nd, testified in opposition. She owns the five-plex at 4919 Prescott, with parking accessed from the alley from 49th to 51st Streets. Her tenants come in from 49th Street driving 100' on a paved road, or they can enter from 51st Street, driving 250' on dirt and gravel. The alley is not maintained and there is no snow removal. A fire truck or rescue vehicle would only have access from 51st, and if entering the alley they would also have to back out of the alley. Closing the access from 49th would cause unnecessary hardship for her tenants. It would be an inconvenience for the tenants to have to drive two blocks the other direction.

Steward clarified with Barber that there is no access for these tenants from Prescott. The alley runs all the way from 49th to 51st Street. The parking for the five-plex is on the alley.

Staff questions

Steward commented that this seems like an unusual circumstance with the alley being the only access for the apartment units. Is it detached or attached to the main structure? Greg Czaplewski of Planning staff believes the aerial photograph shows a detached garage. It is one unit with five apartments, originally built as a seven-plex. Czaplewski acknowledged that the staff did consider the effect of dead-ending the alley, and the applicant is being required to provide a public access easement over their parking lot so that the use of the west end of the alley would remain unchanged, and the applicant has agreed to do so (Condition #1.2). The tenants will still be able to enter the parking lot from either Lowell or Prescott and access that property from the west.

Carlson inquired about the portion of the alley that is paved. Pastor Bock advised that the alley was dirt until the Church constructed the parking lot at 49th & Lowell. At that time, the Church was required to pave 150' of the alley.

Response by the Applicant

Pastor Bock pointed out Condition #1.2, which requires a public access easement so that there is not a dead-end alley. He assumes a fire truck could get in and out from the west through that parking lot.

Taylor inquired about the access for emergency vehicles. Czaplewski believes that it would be sufficient. Dennis Bartels of Public Works advised that the city does not have a specific design. The alley is 16' now and the easement would be equivalent. The Public Works Department would assure that any easement design would be equivalent to the access they have today. However, fire trucks do not typically use an alley, but Bartels believes they could get in there if they had to.

Marvin inquired whether there are any plans to do anything on 51st Street. Bartels suggested that the only way 51st Street will be improved is if the property owners will request it and it would be assessed to the property owners. Public Works has no plans to improve 51st Street and it would be against the Public Works policy to pave the local streets.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Taylor moved a finding of conformance with the Comprehensive Plan, seconded by Larson.

Marvin stated that as long as he is convinced that the tenants for the five-plex will have access with the easement, he is satisfied to go ahead. 49th dead-ends at Prescott anyway. It is not like it's creating an island.

Steward believes the condition for the easement assures access.

Motion for a finding of conformance carried 7-0: Krieser, Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Bills-Strand absent.

USE PERMIT NO. 146A,
TO WAIVE THE SIGN REQUIREMENTS
IN THE O-3 DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT OLD CHENEY ROAD AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Carl Sjulin, President of West Gate Bank, 1204 West O Street, presented the application which seeks approval of the sign package for the West Gate Bank under construction at Old Cheney and Hwy 2. The Bank is proposing to do a low level of signage at this center, i.e. 303 sq. ft. total signage, which is less than one-third of what is otherwise allowed. The reason for this permit is to reallocate some of the square footage allowed on the building to the monument and retaining wall signs. The proposed monument sign at the entrance is for the tenants of the building and the retaining wall sign would be a center sign for West Gate Bank Center. They are carved in stone, made of brick and stone materials, the same as is being used on the building. There will be no use of neon on these signs. The only on-building sign is 64 sq. ft. over the entrance, which identifies the bank. Sjulin believes that this is a very attractive sign package.

Sjulin explained that the waiver would allocate 208 sq. ft. from what could be allowed on the building, and move it to the retaining wall sign and the monument sign. The Bank agrees to prohibit any signage on the east side of the building which faces the residential/AGR area. The Bank further agrees to restrict the amount of signage on the building to 565 sq. ft. at any point in the future. Sjulin then submitted a proposed amendment to the conditions of approval, which would specifically allow this reallocation and he believes that staff is in agreement. The proposed amendment reallocates and allows the entrance sign and the retaining wall signage, and counts that square footage against what would otherwise be allowed on the building.

Sjulin also commented that this exact sign package was shown with the use permit a year ago. They did not have the details at that time and the details are what is being considered today. Two entrance signs were originally approved, but they have backed that down to just one entrance sign. This application does not increase the signage that was previously approved, but seeks a reallocation of the signage.

Carlson confirmed with the applicant that the ground sign is double-sided. Sjulin concurred--the entrance sign is double-sided, the same on both sides.

There was no testimony in opposition.

Staff questions

Steward asked for a staff response to the proposed amendment. Brian Will of Planning staff had no objection. The staff report recommends denial of the entrance ground sign; however, at the time that the staff report was written, staff was still discussing the sign package with the applicant. The finding is now that the signs shown are compatible with the neighborhood and the site design, thus the staff concurs with the proposed amendment. It would allow the entrance ground sign and would allow the ground sign on the west side.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Larson moved to approve the staff recommendation of conditional approval, with amendment to Condition #1.1.1 as submitted by the applicant, seconded by Duvall.

Larson believes the project has been done very tastefully.

Taylor expressed his appreciation for this approach with no complaints from the neighbors. It is very visually appealing and very thoughtfully done. He appreciates the bank's approach in terms of finding something agreeable to the staff.

Carlson believes the applicant has gone the extra mile and that makes a statement about their dedication to the community.

Motion for conditional approval, with amendment to Condition #1.1.1, carried 7-0: Krieser, Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Bills-Strand absent.

SPECIAL PERMIT NO. 2002
FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES
FOR CONSUMPTION OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 48TH STREET AND RANDOLPH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted two letters in opposition.

Proponents

1. Chuck Salem presented the application. He has built a very nice convenience store on the southeast corner of 48th and Randolph. The staff is recommending conditional approval of this application for off-sale liquor and he agrees with all of the proposed conditions. Salem pointed out what he believes to be the positives of the project. This convenience store is a tremendous improvement on that corner for the city and the neighborhood. The applicant has a good record of tobacco and beer sales at all of their stores. In this particular store, the beer sales area has been partitioned to where the school kids and other under-age customers would not be able to be in that area. Salem believes he has tremendous support from the neighborhood, except for the two letters in opposition. The principal at Millard Lefler and the officials at Tabitha Home have both said that they were originally in opposition, but are no longer in opposition because of the area being partitioned. Salem has signed letters from the five adjacent property owners in support. He also has submitted over 500 signatures of customers that came into this store in the first few days that it was open a year ago, and they seem to be people who would rather buy beer there than have to travel up to “O” Street or other locations.

Salem then addressed the 100' distance rule and stated that he has submitted a mitigation plan that has been accepted by the staff. Salem submitted that any noise nuisance is going to occur at the front door. By measuring from the front door (as opposed to the licensed premises), the distance is well over 100' from any residence or residential district in three directions, and 70' from the closest residential district in one direction. That is exactly the area that the mitigation plan addresses, with fence, trees, etc. to keep the noise and light buffered from those residents to the east. In addition, the mitigation plan provides that they will stop selling beer at 10:00 p.m. every evening (otherwise allowed to sell to 1:00 a.m. by the ordinance).

Carlson noted the distances as set forth in the staff report being 44' to a residence to the south, 94' to the east and 30' to a residential district to the east. Salem concurred, pointing out that the staff report measures from the corner of the building that is closest to the residence or residential district. Salem explained that he was trying to change those distances a little bit in his favor by mentioning that most of the noise would occur at the front door. The back corner of the building is not offensive to anyone in the neighborhood. The door opens away from the neighbors; the parking lot is also on the other side of the building and the other side of the fences. Salem suggested that the 100' rule (which probably started out being intended for on-sale) is maybe being applied a little bit unfairly to an off-sale beer license at a convenience store.

Carlson believes the mitigation plan is the same mitigation plan that was submitted with this application previously when it was denied. Salem agreed that it is exactly the same because staff considered it to be a good mitigation plan.

Opposition

1. Kevin Ward, 3754 H Street, officer for the **Witherbee Neighborhood Assn.,** testified in opposition. He strongly disagrees that there is neighborhood support for this special permit. His neighborhood association just found out about this application last night at the 11th hour. The neighborhood association has not had an opportunity to discuss it. The Witherbee Neighborhood was before the Commission recently discussing the proposed Randolph Square, which was going to be a 100 child day care center and 32 apartments. The neighborhood association had over 400 signatures in opposition to that plan and the Commission voted against that plan. If the greater neighborhood knew about this proposal, Ward believes he could have gathered just as much opposition. There were comments in the neighborhood association's previous testimony concerning a proposed Runza on the southwest corner of 40th & Randolph, just eight blocks from this convenience store. He is not sure if Runza is moving in there now or not. What if Runza came forward for a Rock N Roll Runza at that location with a liquor license? This is a "slippery slope". If you allow it at 48th & Randolph, what about others? Does every corner need a liquor license in this town? Ward respectfully requested that this special permit be denied.

2. Carol Brown, board member of **Lincoln Neighborhood Alliance,** testified in opposition, and submitted the Lincoln Neighborhood Alliance "Plan for Action" resolution which, in part, states that, "Lincoln should ....maintain the 'no more than three unrelated persons per household' ordinance and maintain or strengthen spacing requirements for alcohol sales. ...". This resolution has been endorsed by 21 neighborhood associations. This same application was denied by the Planning Commission less than a year ago. She does not know why it is coming up again. The issue of liquor sales should have been dealt with at the time that the convenience store was built. Someone needs to start looking ahead on these issues.

The City has codes which the neighborhoods expect to be upheld. "We do not want to have to come here all of the time and defend these codes. If you make a waiver for one, what about the next one? It becomes a snowball effect."

3. Margaret Washburn, 619 S. 42nd Street, testified in opposition. She also testified a short time ago asking for help to preserve the quality of life they have in the Witherbee neighborhood, which the Planning Commission supported. Today, she is back asking for the same thing – to help us preserve the quality of this good neighborhood. The location of this business is across the street from the church that has objected. This would be an awful example to these children. She has a hard time recognizing any benefit that would come from plopping down a situation like this right in the middle of a residential neighborhood. Absolutely no good can come from this right in the middle of a residential neighborhood with churches and senior citizens living all around. If people want alcohol that bad, aren't there many, many places where they can obtain it without being in the middle of our good neighborhood? She urged that this special permit be denied.

4. Andy Washburn, 619 S. 42nd Street, testified in opposition. He agreed with Margaret Washburn's testimony. The filling station's main purpose is to sell gasoline and condiments and snacks. The main purpose will still be fulfilled, but alcohol and gasoline do not mix. More people are killed by alcohol than in war. This would be detrimental to our community.

5. Mary Roseberry-Brown testified in opposition. She teaches school and this last week all of the schools spent a lot of time educating kids on staying away from drugs, including alcohol. She has been in this store and it is mobbed with kids after school. She does not like to see the children exposed to the purchase of alcohol.

Staff questions

Marvin asked Rick Peo to discuss the "slippery slope" argument and how it can be avoided. Peo suggested that it can be avoided by applying the standards uniformly in providing protection to everyone. Lincoln does not have a "per se" mandatory 100' separation requirement–it is a 100 separation requirement, unless there is adequate mitigation approved by the Planning Director. If you are going to allow mitigation, then you are going to have to

look at the type of mitigation plan that is approved and apply that consistently on future applications as well. A track record will be established once we start approving mitigation plans. In the past, when we initially adopted this ordinance, we were typically allowing a fence as mitigation between the residence and the store. Then we started denying that as sufficient mitigation. This is probably one of the first coming back where we are trying to come up with what might be a permissible mitigation plan. The problem is that the Commission is always going to have some discretion in approving or denying the mitigation plans, and decisions will be made that will vary. Each application is independent. None are truly identical. It will become a policy thing that will grow. As you approve mitigation plans, you will start coming to some type of uniformity that will repeatedly show up.

Marvin's comment in response was that there is a lot of turnover on the Planning Commission. It seems like you have a bar that is fluctuating up and down. If there is approval and they try to raise the bar back up, it seems like there is a legal avenue. Peo agreed that there is that likelihood and the city has been to court before because of the 100' separation when in the past we allowed a 6' stockade fence. The problem with this ordinance is that it is not a "per se" rule and it does allow for mitigation. Therefore, there has to be the potential for flexibility.

Steward understands that the requirement is to mitigate nuisance between uses and not to regulate any morality of the matter at issue. Peo agreed. The Commission is to be reviewing this on the basis of land use issues and not the sale of alcohol as being a proper or improper thing to do.

Marvin sought clarification of the distance measurements. Brian Will of Planning staff referred to the table in the staff report. The distances listed reflect the distance from what is considered the licensed premises, which refers to that portion of the building in the state liquor license. You can have a building and limit the licensed premises to a portion or all of it. The distances in the staff report refer to the measurements to the nearest residence/residential district/day care from the licensed premises. That does not include the car wash. In the original application, the measurements included the car wash and were made to the footprint of the building. There was no state liquor license issued yet at that time so the measurements were taken at the extremities of the building.

Will also pointed out that the mitigation plan does not include the partitioned portion of the building discussed by the applicant; however, the Planning Commission could ask the applicant to include that as part of the mitigation plan.

Response by the Applicant

Salem agreed that the partitioning is not part of the mitigation plan but he thought it would be a good way to handle it. The partitioned area would be glass with a sliding glass door. It would be easy for the employees to see if anyone obviously under age is in that part of the

store or close to that beer cave, and they could usher them to another part of the store. Steward clarified that there is no difference as far as visibility of product. Salem suggested that the difference is that they would not be able to get to it as easily.

Salem agreed that the staff measurements are accurate. He was just trying to point out that any nuisance would be at the front door.

Salem pointed out that most of the opposition is not against the store, but against how much liquor should be consumed and where it should be purchased. That is not something that he is able to determine. He reminded the Commission that Tabitha Home and Millard Lefler Junior High have not expressed any concern or opposition, and he thinks that says a lot.

As far as the neighborhood, Salem believes he has support of the neighbors for this project. A lot of people would rather stay in the neighborhood to buy beer. He attended the 40th and A Neighborhood Association meeting a year ago. There was no opposition from the 24-25 people that attended that meeting, and at least 2/3rds were very much in favor of the convenience store with off-sale beer.

Salem believes it is important to note that the staff is recommending conditional approval. He did meet with several people from city departments, the Police Chief and at least one of the City Council members, and they gave up on trying to find a set of rules that would solve everything. The City Council member suggested that it be left a little bit gray, and that it is the City Council's job to differentiate between a good project and a good location and a bad project and a bad location.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Larson moved to approve the staff recommendation of conditional approval. Motion died for lack of a second.

Taylor moved to deny, seconded by Marvin.

Taylor agrees with Tabitha that it is a very good looking building. He thinks it is great that that station is placed there. However, the letter from Tabitha does not say at all that they are in favor of liquor–they just like the way it is run. It is kind of unique that we have enough people here that state their opposition and those that signed the petitions in favor are not here. He also noted that the staff is recommending conditional approval, even though the Police report states that it is within the 100' separation requirement and the Police recommends denial. Our planning staff really needs help in making some of our decisions. It is our job as Planning Commissioners to look at things from another perspective and he thinks the Commissioners are looking at it quite objectively. Maybe this is not a moral issue, but all of the laws are based upon some moral ingredient–some ethics–and it is hard to differentiate the difference

between ethics and morals. This is a good example of people concerned about the community. It is incumbent upon the Planning Commission to think in terms of a whole neighborhood, and to think in terms of the spiritual, moral fiber, the economic fiber and viability of our community as well. Taylor supports the convenience store and this is a risk the owner takes in terms of profit.

Carlson stated that he will support the motion to deny because he does not believe there is sufficient mitigation shown to preserve the health, safety and welfare of the community. It is the same analysis he made last year on this same project, and this is completely the same fact pattern we looked at last year. The only new information is the fact that the car wash is no longer to be considered part of the measuring distance. No one assumed there would be alcohol sales in the car wash when we did our analysis last year. He is supportive of Marvin's comments about uniformity, protection and consistency, and that is one of his concerns. Peo talked about independent fact patterns between applications, but that aside, there should not be independent analysis between the same application. He does not understand why we have the same application with the same fact pattern and a different staff recommendation. We need to do a better job of analyzing not only a similar fact pattern, but previous recommendations. There is not sufficient mitigation.

Krieser stated that he will vote to deny because the Planning Commission turned down a liquor permit at 33rd & "O" with the same situation of less than the 100' distance.

Marvin stated that he looks at the 44' measurement. If we have a vibrating bar that goes up and down and we set a precedent with the 44' distance, then he thinks the City is setting itself up for a problem in the future.

Duvall commented that this same project has been before the Commission previously and it was denied. Nothing has changed. The neighborhood has encouraged that there not be liquor in the area.

Steward stated that he will also vote to deny. His position is basically out of historic consideration, not only for some other similar projects, but this project being before the Commission on a 6-3 vote for denial at an earlier stage. Nothing physically has changed. The partitioning with the glass wall does not accommodate a distinct and less than obvious designation of an area. He intends to be consistent, personally. He can recall voting against some applications that were 90', and practically 100'. He does not think it inappropriate to consider mitigation plans as brought to us by the staff. He believes that there should continue to be the opportunity for a mitigation plan because each application and each site has its differences and there is the possibility of a different analysis. In this case, he simply does not agree that the mitigation plan satisfies waiver of the distance requirement.

Motion to deny carried 6-1: Krieser, Taylor, Marvin, Duvall, Carlson and Steward voting 'yes'; Larson voting 'no'; Bills-Strand absent.

SPECIAL PERMIT NO. 2039
FOR AUTHORITY TO SELL ALCOHOLIC
BEVERAGES FOR CONSUMPTION OFF THE PREMISES
ON PROPERTY GENERALLY LOCATED AT
SOUTH 48TH STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Mike Alesio, the applicant/owner, presented the application. The retail part of this store will be next to a Valentino's carryout. Val's has a long history in the retail business in this community. They have been very mindful and they train their employees on the values and culture of their company. They employ 650 people full- and part-time. The Valentino's philosophy in management of the convenience store separates them from competitors due to their attention to detail in cleanliness and enforcement of rules in the community.

2. Allen Wachter of Valentino's reviewed the site plan, with Highway 2 to the south. The property is currently zoned B-1 with R-2 zoning to the east. The intent is for a car wash and convenience store with four-island pump arrangement and a "Val's To-Go" as tenant. There is only one access in and out of the site, on 48th Street. Lighting plans will meet all city design standards. They will construct a new fence running the entire length of the east property line, establishing a walking distance from 160 to 250 feet from the residential property to the front door of the establishment. They intend to supplement the trees on the surrounding property with a full tree and landscaping plan. One of the conditions of approval recommends altering the mix of trees to improve the number of trees that would have an evergreen quality and provide more screening year around. The applicant met with all the neighbors within 120' and acquired signed statements of understanding regarding the applicant's intentions for this property, including the request to sell off-sale beer. They do not intend to license the "Val's To-Go" portion.

As part of the mitigation plan, the applicant has agreed to limit hours of operation for the convenience store from 6:00 a.m. to midnight. The hours for beer sales will be limited to

nothing past 10:00 p.m. The beer cooler doors will be locked at that time. There will be a separate cooler for beer with five separate doors, and that will be the sole area for beer storage outside the 100' condition.

All of the staff will receive training for responsible alcohol sales. The applicant has every intention to being a good neighbor with the 30 years that Mike Alesio has owned Valentino's.

Alesio further pointed out that the ordinance does allow for mitigation. It also indicates that such other requirements as the Planning Director may require can be imposed. When he met with staff, he asked what else he needed to do. That is when he was asked to move his door beyond the 100' distance from the residential property line. This was done and it cost $35,000. This is an indication of our intention to try to comply with requests from the city as to a reasonable mitigation plan. The statute does not have a complete ban on licenses within 100'. It allows for an "acceptable mitigation plan". Alesio believes that he has gone the extra mile on this. This location is in a commercial area. The only residences affected are those that abut the east property line of their establishment.

Opposition

1. Carol Brown, 2201 Elba Circle, testified in opposition on behalf of the **Lincoln Neighborhood Alliance,** and requested that the Commission follow the code. She suggested doing away with the mitigation type issue in the code to clarify things more.

Staff questions

Carlson noted that the staff report does not include a chart of the measurements. Brian Will of Planning staff acknowledged that he did not do one only because this property is adjacent to an R-2 district and the site plan clearly delineates the 100' separation from residential to the east. What would be considered the licensed premises is the entirety of the convenience store. The "Valentino's To-Go" is part of the same building but is not part of the licensed premises, so a good share of the convenience store is actually within 100' of the residential district to the east. He does not believe that any part of this structure is within 100' of a residence; however, there are two other criteria – the residential district and day care. It is not 100' from a residential district.

Response by the Applicant

Alesio asked the Commission to keep in mind that Valentino's has been in the pizza business for a long, long time and they know people can get beer in the grocery store. This is not a moral issue. This is a question of mitigation and nuisance. We know that if we are going to

sell pizza and have the opportunity to develop a piece of property, we would also like to sell beer if the customer chooses to buy beer–it is not illegal. We have moved the door 100' to have the actual display of the beer 100' from the residential property line.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 29, 2003

Larson moved to approve the staff recommendation of conditional approval, seconded by Duvall.

Larson believes that the off-sale beer is not an entirely undesirable thing. We as the Planning Commission need to take into consideration the character and the reputation of the applicants. He does not know how there would be any better reputation than the Valentino's organization. They have been in business for 30-40 years and they have been great citizens.

Taylor stated his belief that all laws have a moral or ethical foundation, but also we see in this application that there is no outcry from the neighbors. This has been properly mitigated. There is not the closeness of residential areas like we saw in the previous application (Special Permit No. 2002). We don't have the concern about Tabitha or the school students. He cannot in good conscience vote to deny this application based upon the information that he has, even though personally he does not drink.

Carlson stated that he will be voting against the motion. Clearly, he agrees that Mr. Alesio is an excellent citizen and great contributor to the community, as is Mr. Salem. The issue is not morality or the applicant. The issue is the potential for conflict. The 100' separation is very important. He does not see that the potential for nuisance has been mitigated.

Marvin stated that he will get on the "slippery slope" of mitigation and vote in favor. He believes we can have a standard of 100' and that would be fine, but as the City Attorney has pointed out, we don't have that. We have what some people might call "common sense" and this one seems different than the other one (Special Permit No. 2002) to him.

Steward stated that at the risk of looking inconsistent, he will vote in favor of this application. What we have had here are two back-to-back examples of why mitigation plans are important because we have two distinctly different sites with distinctly different environmental characteristics. We also have an underlying circumstance -- a condition of one applicant doing everything possible to maximize the mitigation and another applicant being blocked in for lack of early good planning so that there are very few options other than to continue to try to get it approved as it was. He believes that the most important mitigation is the fact that any resident's back door is further than 100', which satisfies the condition which he thinks is more paramount than the district. We only have it touching a residential district on one quarter. It seems that there are several distinctive characteristics to cause the mitigation plan to be valid and he will vote to support it.

Motion for conditional approval failed 4-3: Marvin, Duvall, Larson and Steward voting 'yes'; Krieser, Taylor and Carlson voting 'no'; Bills-Strand absent.

Carlson moved to deny. Motion died for lack of a second.

This application is held over for continued public hearing and administrative action by the Planning Commission on November 12, 2003.

CHANGE OF ZONE NO. 3399
TEXT AMENDMENTS TO THE IMPACT FEE ORDINANCE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Taylor, Duvall, Carlson, Larson, Marvin and Steward; Krieser and Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Steve Henrichsen of Planning staff presented the proposed text amendments to the impact fee ordinance. These are basically "housekeeping" changes to the ordinance as a result of reviewing the ordinance and using the ordinance over the last several months. This proposal does not make any substantive changes at this time. While the Economic Development Criteria will have a separate public hearing, there is one reference in this proposal to the economic development criteria which is an amendment that would say if the criteria is adopted, then it would be an administrative action to grant reimbursement for economic development rather than that being a City Council action.

Public Testimony

1. Bill Newstrom testified on behalf of the **Realtors Association of Lincoln,** and submitted a letter sent to the Planning Department staff by Peter Katt. Newstrom addressed the major flaw in the original impact fee ordinance – disallowing senior citizens the low income impact fee exemption that is allowed to younger families. Picture this: A senior citizen widow living on a modest monthly fixed income realizes her current two-story 50 year old home is going to require more money than her income will afford for the continued maintenance and monthly utilities. She decides to sell and purchase a smaller energy efficient townhome with assistance to take care of lawn and snow removal. She has been paying property taxes and wheel taxes. We can hopefully assume a good share or portion went toward street construction and street repair for her neighborhood as well as others. When the sale of her

home is closed, she receives barely enough to purchase her new townhome. But since she is a senior citizen and is not applying for any government loan, she would be expected to dig into her savings to pay the additional $2500 to $9000 impact fee, even though the young home buyer using nearly 100% financing on a government program would not have to pay this fee, and even though the income of the young family is much higher than the senior citizen. The Realtors Association urges the Commission to expand the exemptions to include all low income buyers, not just those utilizing government programs. The Realtors Association is the original advocate for home ownership and housing matters. Home ownership is critical to our local economy and the future of our city. This barrier to home ownership should be lifted to give senior citizens the opportunity to live in a home their income will allow, and their option should not be dictated by their ability or inability to qualify for a government housing program.

2. Peter Katt testified that he is not entirely in opposition. His testimony is to make comments and to expressed some concerns about the proposed amendments. His law firm has been actively involved with a number of clients as the impact fee ordinance was developed and debated. The proposed amendments have been discussed as "minor clarifying" amendments. Katt's assessment would disagree with that conclusion as to three components:

> Amendment "d" increases arterial street costs for developers.
>
> Amendment "e" is effectively an increase in impact fees and is a significant policy change providing for automatic increases in impact fees by inflation. We do not do that with our permitting and taxing and this proposed policy change should have a separate hearing.
>
> Amendment "g" provides for some change in the language with regard to processing categorical exemption amendments. If you look at the language dealing with categorical exemptions, it was his law firm's position that granting categorical exemptions was a mistake–it was bad policy. If you paid a dollar for an impact fee facility, that payment entitles you to complete categorical exemptions for those impact fee facilities. That is a bad public policy. It never made sense but it was adopted. Exemptions should be based upon the dollar spent and credits provided to the fees rather than categorically exempting them. The original justification by staff was that it would be easier because the administrative burden of trying to administer a dollar-for-dollar credit was way too much work. What they found out is that categorical exemptions have not limited or reduced the amount of work.
>
> In addition, with the proposed language, it now purports that an amendment to a development will require the need for some type of negotiation or the categorical exemption simply goes away. It would appear that this would result in the return of developer negotiations which is one of the benefits we are supposed to avoid by

having impact fees. What is the process that will be followed with the proposed language for the amended process for categorical exemptions? What standard will be applied for applying the categorical exemptions to the amended project? How is this new amended language for this consistent with the guiding principle of making impact fees fair and predictable?

Marvin suggested that categorical exemptions seem to be a grandfather clause to allow people not to have to be exposed to changes in the future based on arrangements they have already made. How do you address the principle of grandfathering things but yet you still want to open up the categorical exemptions? Katt responded, stating that the grandfather principle does not apply to impact fees. It is not one and the same. Dollar-for-dollar credit provides what was negotiated. The categorical exemption says you pay x dollars and you may get x times 1,000 in benefits today. Those dollar benefits go directly into the developer's pockets. You get more than the benefit of your bargain. But, Marvin suggested that you don't know whether a property owner might have paid more for the land than they otherwise would have if they would have known there would be impact fees. That is what the grandfathering tries to protect. Katt agreed. That is a policy decision that has been made by the city for the categorical exemptions and it is in place. Today you are seeing a recommendation to amend categorical exemptions and it says you no longer get the benefit of a categorical exemption if you amend your project. This is a very significant substantive change in that it purports to take away the categorical exemptions on any project that gets amended. It obliterates the grandfather clause for any project that comes in and is amended. Categorical exemptions were intended to broadly protect the grandfathering principle and to make the administration easy on the staff. At that point, we said there is no easy application. You still need to look at each project individually and the dollars that were spent. The question is, how do you coordinate and apply past agreements that the city has had on new projects as they move forward? What is the policy standard going to be?

3. Kent Seacrest testified on behalf of Ridge Development Company and Southview, Inc. He also disagreed that these are "minor" amendments. There are some economic impacts here. He is also concerned about the amendment on categorical exemptions. There needs to be some tightening up of the language. The Duncan study made the assumption that the city would be picking up sidewalks along arterial roads and doing traffic lights at the half and quarter mile, and now they don't want to do that. A traffic light is a $100,000 ticket item. That is an equivalent to my clients of increasing impact fees. He requested a two-week deferral to meet with the staff and understand the proposed amendments and to bring forward amendments as he deems necessary.

Marvin inquired whether the Mayor's Infrastructure Finance Committee looked at who was to pay for the sidewalks along arterials. Seacrest does not think that came before the Finance Committee, so it must have come before some of the other subcommittees. Seacrest also believes there are several good amendments, but there are a few that need further clarification or cleanup.

4. Lynn Moorer testified that these amendments are far more than minor housekeeping changes. She is opposed to making the reimbursement of impact fees an administrative function. She suggested that the reimbursement is very much dependent on the nature of the criteria and, given the criteria being proposed, it is a major change to remove it from the discretion of the City Council to a staff administrative mechanism. Removing discretionary authority by the City Council and apparently envisioning something that is much more automatic or discreet in terms of decision making is not a minor amendment. What you adopt with this can affect a whole lot of the rest of the current ordinance, as well as important considerations as to how it fits into the Comprehensive Plan.

Staff questions

Carlson asked staff to respond to Katt's comments regarding the categorical exemptions. Henrichsen indicated that the staff would not be opposed to a two-week deferral. Regarding categorical exemptions, Henrichsen clarified that the whole idea of categorical exemptions is not what is before the Commission, but more specifically what to do with an amendment. There is no intent to remove the categorical exemption for the entire project when amended. If you come forward and add 200 units, those new additional units may be subject to the impact fee the same way as some other project that came forward with 200 units. Before impact fees, all of our previous annexation agreements set forth the costs and the fees. Those agreements also always noted that if you came back and changed your project, you might have a cost associated. This has been very standard in any annexation agreement. That is what we are proposing here. If you come back to amend your project, that increment of increase may be subject to the cost as well.

Steward inquired what would happen if the development came back to diminish the project? Henrichsen clarified that there is a category exemption for the whole project, so there would be no reduction. Under category exemptions, there is no payment made--they are not subject to the fees because they have already paid their costs.

With regard to eliminating reference to government programs, Henrichsen explained that there are two things that had been discussed in terms of low income and when that low income reimbursement is processed. This amendment takes out language that said that reimbursement is not valid until the a house is occupied. In discussing this with builders and

lenders, it was suggested to remove that clause so that it could be done at another time such as at closing. This amendment does not change the number of people available to use the reimbursement. It just changes the processing time.

Henrichsen further commented that Mr. Newstrom's idea would expand the exemption on the number of people available under low income. Our definition of low income required that that person be subject to some local, state or federal program. Our thought here was that since you were in some other program, that would curb the number of people that would try to abuse the system. It would be important to include some provisions as to how the city might address people who might try to abuse the reimbursement. The staff is not in favor of addressing the Newstrom amendment.

Marvin asked staff to address the sidewalk issue on arterial streets. Henrichsen explained that in general, the Mayor's Infrastructure Finance Committee addressed several items in terms of overall costs. They did not address impact fees, but there was a recommendation that traffic signals should be the responsibility of the developer or the adjacent property owner and that sidewalks be the responsibility of the adjacent development and property owner, the same as it has been for many years. The staff suggests that this should also applied to the arterial street impact fee.

Duvall moved to defer two weeks, with continued public hearing and administrative action scheduled for November 12, 2003, seconded by Taylor and carried 6-0: Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Krieser and Bills-Strand absent.

MISCELLANEOUS NO. 03012
ADOPTING CRITERIA FOR REIMBURSEMENT
OF IMPACT FEES FOR ECONOMIC DEVELOPMENT.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Taylor, Duvall, Carlson, Larson, Marvin and Steward; Krieser and Bills-Strand absent.

Staff recommendation: Approval.

Ex Parte Communications: Marvin reported that he talked with Dr. David Rosenbaum, PhD in Economics, Loraine Kennedy, PhD in Economics, Lynn Moorer, Michaela Hansen, Steve Henrichsen, Blane, Canada (which did some of the economic impact studies) and some Illinois planning departments.

Proponents

1. Steve Henrichsen of Planning staff explained that the proposed criteria is to be adopted by the City Council by resolution. The staff used the Employment and Investment Growth Act as established by the state in bringing this forward. If the City Council adopts this criteria, it is so specific and so objective that there would not be any discretion involved and that is the reason why we have proposed this criteria be administratively handled in Change of Zone No. 3399.

Marvin asked what the impact fee for roads would be today for a 25,000 sq. ft. or 100,000 sq. ft. office building. Henrichsen offered to do the calculations and provide the information.

Carlson moved to defer two weeks, seconded by Duvall and carried 6-0: Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Krieser and Bills-Strand absent.

Public Testimony

1. Peter Katt stated that his law firm is extensively involved in the impact fee debate in our community as it has occurred over the last several years. He stated that he is making an observation as opposed to testimony in opposition. As we move forward on these amendments, we need to remember where we were just nine months ago. If we move forward with impact fees, we said they will not have any impact on the economy. Now, today, we have an effort to come back and mitigate the economic impacts. Katt submitted that the economic impact that is being mitigated will not have as significant impact on our economy as will making these types of mitigation available to smaller businesses, which most studies show generate the vast majority of jobs, particularly in Lincoln.

We had discussion at the time that impact fees would not have any significant economic impact; this is to fairly allocate and make sure everyone is paying their fair share; the guiding principle is the fact that we are supposed to have a balanced approach. Impact fees were 10% of the 100% solution. Where is the balance of the 90% solution? We had a lot of time and investment put into the Mayor's Infrastructure Finance Committee and that's dead. It's shelled. So the question is, on a broader basis on economic development issues, why should new development be the only segment of our community that is paying the infrastructure needs of a growing community? Shouldn't we revisit the fundamental assumption? We requested impact fees be put on the side until we had a true comprehensive plan that addressed all of our community infrastructure needs and not just 10%. And now we are left with that problem.

Katt suggested that the realistic economic development solution for this dilemma is to repeal all impact fees. From the Mayor's Infrastructure Financing Study we found out that this community can afford to fund all of the sewer and water infrastructure we need for the next 25 years with reasonable rate increases on a regular basis. So that solves our water and sewer

needs. We are dramatically behind on roads. The development community will need to step to the plate and put money into paying for better roads–not through impact fees–there is no legal authority for that. The solution is to replace the arterial street impact fee with a fee that the development community can support.

Marvin challenged Katt's comments about the Infrastructure Finance Committee. He was on that committee and he is proud of what they did and takes exception to "dead and done". Did we raise water rates? Yes. Did we raise sewer rates? Yes. Did we raise wheel taxes? Yes. Have we precluded and eliminated the possibility that we could go bond issue to build roads? No. So, much of what we put together has moved forward. Katt does not disagree that the committee did wonderful work and had their report been accepted and adopted, he believes the commitment to fund the other 90% would have been met. But the biggest component of the task force recommendations was never even voted on. Marvin respectfully disagreed. What we did with water and sewer moves about a quarter billion dollars of projects forward. Katt agreed, but the problem is roads.

2. Lynn Moorer indicated that she will reserve her comments for the continued public hearing on November 12th.

3. Carol Brown, 2201 Elba Cir., stated that she was on the Mayor's committee. This is not a new concept that came up for economic development. It was part of the infrastructure package. It was mentioned but the criteria was left up to the Planning Department to develop. This is not something new. It is in the report.

4. Tom McCormick, 1406 D Street, testified in opposition to establishing criteria by which some businesses and not others are automatically reimbursed for impact fees. He was very glad when this ordinance was approved, but he does not see why a complication must be introduced in the process at this early stage of the game. He wonders why we can't just let what was decided work and see if it works. Although the process of instituting impact fees has been agreed upon, and it has been assumed that the City Council is going to be the body that oversees this matter, he thinks we're putting the cart before the horse to consider this idea before we considered what the criteria was going to be. This proposal would make reimbursement automatic when it is determined that the criterion has been met by a business. Will it be based on the number of jobs created, or how much the business is investing? That leaves the city in the dark during the time that we determine whether the criteria is met in the first place, and during that period, does the city know what is coming in and not coming in in impact fees? He is concerned if the Council advocates giving up this authority. Has it been demonstrated that the investors are in need of the exemptions? Aren't these the same people who are going to still be receiving benefits from LB 775 to begin with? This is like giving people an exemption for getting an exemption. He does not believe there has been any demonstration of needs assessment. This jumps the gun. We should give the impact fee process time to work.

5. Mary Roseberry-Brown testified in opposition. One of her big concerns is that it favors big business at the expense of the small businesses. That seems very unfair. Small businesses generate more jobs on the whole than large businesses, and they also give the character to our community that wouldn't be there otherwise. It does not seem fair to penalize them and give reimbursement to the larger businesses. Secondly, there is no cost benefit analysis showing that it would really benefit the community. On other projects that the city approves, there is a cost benefit analysis first.

6. Mark Vasina, 2800 S. 19th, testified in opposition. This proposal that refunds certain impact fees is seriously flawed. There are serious problems with the program administration and disclosure. The need for this plan has not been established in any way in accordance with good government practices. He is well aware of the argument made by the city economic development people that city's need incentive tools to compete with other cities, but it is also recognized that incentives are low on the priority list for site section decisions. The Comprehensive Plan and the Angelou report outlined goals and processes toward economic development. Neither place any emphasis on business tax incentives, in general, or impact fee reductions, in particular. No information was presented that impact fee reduction conforms with the Comprehensive Plan; that they are necessary for desirable business growth; or that impact fees would be the best form that business incentives should take. This plan is not tailored toward businesses identified as target industries in the Angelou report. This will only reward large business already receiving benefits of LB 775. Vasina suggested that profile criteria be considered and suggested that the criteria should be evaluated when coming up with the strategy for business development. The result not only fails to conform with the Comprehensive Plan and the Angelou report, but creates significant competitive inequities for other worthy businesses in the city. $12.99 provides no assurance for wages. No program to reduce city revenue should be undertaken without a careful evaluation of cost and benefits. No such reasonable cost benefit analysis has been presented and none has been proposed by the advocates.

Personally, Vasina does see value to removing the reimbursement from the City Council discretion, but this ill-conceived plan does nothing to foster the business goals established for the city and weakens a newly created program to collect impact fees. Vasina suggested that this plan be rejected and recommended that the Planning Commission recommend to the City Council that they form some sort of task force or study to review the issue of business incentives.

Henrichsen clarified that what is being proposed in terms of the criteria is an attempt to be very specific so we don't look at this as being an item giving a lot of discretion to staff. This rewards large creation of job growth. It does not state how large the company has to be but talks in terms of the amount of job creation. He agreed that there was no cost benefit analysis,

nor was one done for low income housing. Impact fees are reimbursement for low income housing to provide encouragement to low income housing. The Comprehensive Plan talks about encouraging economic development, and that is what this is.

Darl Naumann reminded that we need to have a balanced program of economic development. Ten to twenty percent of our work is attracting businesses. Most business is done with expansion and retention activities–that is where jobs are created. We are trying to put a program in place where we can help businesses that are interested in expanding or locating in Lincoln. This is gap financing for a lot of businesses who are interested in expanding. This is part of the package we put together for gap financing.

Marvin thought there was a cost benefit analysis. Henrichsen believes that what Marvin is referring to was an analysis discussing the impact of job growth. Henrichsen assumes the opposition is looking at all of the potential reimbursements over a multi-year period. Naumann clarified that there is an economic development assessment of what creation of jobs does for a community. That report was used at the State Department of Economic Development. That consultant did not work for Lincoln. We used their report that was presented to us in 1995 and then we extrapolated the numbers out of the Blane, Canada report. We did the analysis off of the 1995 numbers.

Marvin noted that there are two separate analyses -- one that assumes 62 ancillary jobs being created and one assuming no ancillary jobs being created. How committed are you that there are 62 ancillary jobs created in the Lincoln economy by the creation of 30 jobs? Naumann acknowledged that all of this is speculation, of course, but he is fairly confident with the numbers. Marvin wondered how you create an agricultural worker in Lincoln, Nebraska. Naumann stated that it depends on how you classify it. It could be greenhouse workers.

Marvin shared this information with two economists and they said that this was really far-fetched. Naumann reiterated that this is pure speculation on our part. We have not done a cost benefit analysis. We have not done anything but turn over what we had in our files. Carlson assumes it would be administered uniformly between small and large business, and there is a threshold for a 5 employee company to create 30 jobs versus a 500 employee business creating 30 jobs.

Assuming from the resolution that one of the key triggers to determining whether a company is eligible is the building permit process, Steward inquired as to what happens when the developer builds the building and takes the building permit out and the company is not actually defined? Or the company may not be in the public realm as far as who that company is, but a building permit has already been taken out? He is thinking of the circumstance of the so-called job centers where a development enterprise has done all of the capital investment. Henrichsen referred to page 14, Section 11, which talks about provisions for “speculative buildings”. It allows a developer or builder to apply for the impact fee reduction at the time of

building permit, even though at that time they don't have that company in hand. It gives them three years to be able to come forward with that information. That was our attempt to address this issue.

Marvin referred to page 15 (2), which requires that the annual report shall list the name of each taxpayer, the location of each project, etc. Then in (3) is states that no information shall be provided in the report that is protected by state or federal confidentiality laws. How do you release a report that lists the name of each taxpayer and not violate the confidentiality laws imbedded in LB775? Henrichsen explained that the intent was any information that would have been provided regarding salaries of individual persons or employees. If you apply for the arterial street reimbursement it will be our requirement that the name of the company be public information.

Steward referred to page 4, #8, which lists the five categories of business that would be eligible. It seems to be a very limited list of business types. What about pharmaceuticals, what about bio-tech, what about food processing? Naumann suggested that all of those would fit into manufacturing and some would fit into research and development.

Marvin had a discussion with Michaela Hansen, the Impact Fee Administrator, who indicated that the state looks for blue and pink collar workers. The state looks at your numbers of blue and pink collar workers, and if you have enough, then you qualify for 775. Tell me how blue and pink collar workers are applied in 775. Michaela Hansen of Public Works explained that she was talking about evaluating wages. The thrust is not to pull the executives into that average. The thrust is to use the people that are in the hourly wage position. Not every job will qualify. Marvin is interested in the mechanics of that. Hansen explained that the employer would make their application with the Department of Revenue; the Department of Revenue determines which job descriptions qualify for the benefit -- that is strictly the LB 775 criteria. Her point in her conversation with Marvin was that not every job or every position would qualify as an eligible job to be counted on the tick list. They look at the specific job titles. Some are eligible and some are not. You can't say that 10% of health care facilities employees would be eligible. The Department of Revenue needs to make that call. But, if they find 10% are eligible, Marvin wants to know if that means a 10% refund. Hansen explained how the resolution is being proposed. If you create 30 jobs and you invest 3 million dollars (all have to be qualifying and eligible), and you maintain those for three years, at the end of three years they are reimbursed ½ of the arterial street impact fee.

Marvin inquired whether Naumann was indicating that the gap financing is another piece that employers are going to count on to make their project meld. Naumann stated that it can make or break a company. It may make the difference between a company expanding or relocating in the city. That is the only thing that we can determine. It depends on the company and their financial package. Most of the things we do are in cooperation with banks and their financial advisors.

CHANGE OF ZONE NO. 3413
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT N. 24TH STREET AND SUPERIOR STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 29, 2003

Members present: Taylor, Duvall, Carlson, Larson, Marvin and Steward; Krieser and Bills-Strand absent.

Staff recommendation: Denial.

Proponents

1. Carol Brown appeared on behalf of the Landon's Neighborhood Association, one of the applicants, and requested deferral until February 18, 2004. They will be meeting with the owner/developer in the next couple of weeks again to talk about what would fit into this area.

Carlson moved to defer until February 18, 2004, seconded by Taylor and carried 6-0: Taylor, Marvin, Duvall, Carlson, Larson and Steward voting 'yes'; Krieser and Bills-Strand absent.

There being no further business, the meeting was adjourned at 4:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 12, 2003.

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